

Southern California

Water Company

A Subsidiary of American States Water Company

T R A N S M I T T A L

July 22, 2005

TO: Lester Snow, Director
Department of Water Resources
State of California
P.O. Box 942836
Sacramento, CA 94236

RE: Bulletin 160-05

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☐ Via _____

THE FOLLOWING

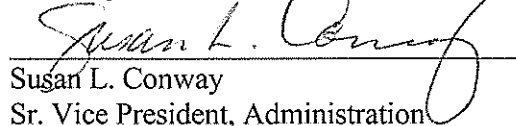
- ☐ Lab Reports
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☐ Legal Description
☒ Comments

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REMARKS:

Enclosed please find comments from Southern California Water Company on Bulletin 160-05 California Water Plan.


Susan L. Conway
Sr. Vice President, Administration

SOUTHERN CALIFORNIA WATER COMPANY

SLC/vh

C: The Honorable Michael R. Peevey, President, CPUC
The Honorable Geoffrey F. Brown, Commissioner, CPUC
The Honorable Susan P. Kennedy, Commissioner, CPUC
The Honorable Dian M. Grueneich, Commissioner, CPUC
The Honorable John A. Bohn, Commissioner, CPUC
Stephen Larson, Executive Director, CPUC
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July 22, 2005

Lester Snow, Director
California Department of Water Resources
PO Box 942836
Sacramento, CA 94236-0001

Attn: Paul Dabbs, Chief
Water Resources Evaluation Section
Statewide Water Planning Branch

**COMMENTS ON BULLETIN 160-05
CALIFORNIA WATER PLAN
PUBLIC REVIEW DRAFT**

**I.
Company Overview**

Southern California Water Company (SCWC)¹ is a publicly-held California corporation that supplies water² to more than one in 30 California residents – more than 1 million people – in 41 separate water systems located throughout California, from Lake, Sacramento, and Contra Costa Counties in the North to the coastal plain and the desert regions of Southern California. Each of these public water systems has a unique mix of water supply sources including, in many cases, local groundwater supplies. Incorporated in 1929, SCWC has been a water supplier to the communities it serves for more than 75 years.

SCWC is one of the largest of the 144 water utilities regulated by the California Public Utilities Commission (CPUC). Water utilities regulated by the CPUC dedicate their assets to public use and serve the public to the same extent as public agencies. One hundred twenty eight of the regulated

¹ The Company does business as Arden-Cordova Water Service and California Cities Water in certain parts of the state.

² The Company also operates one electric system.

water utilities are classified as “small water companies” by the CPUC. Almost all of these serve small, rural populations of fewer than 2,000 service connections. In all, about 23 percent of Californians receive their drinking water from regulated water utilities³.

In Southern California, SCWC serves water to customers located in Orange, San Bernardino, Los Angeles, Ventura and Santa Barbara Counties. The Company purchases 75,000 acre-feet or more of imported water annually from the Metropolitan Water District of Southern California through six MWD member agencies including the Upper San Gabriel Valley Municipal Water District, Three Valleys Municipal Water District, Municipal Water District of Orange County, and Calleguas Municipal Water District. If SCWC were an MWD member agency, its water purchases would rank it as one of MWD’s ten largest water customers.⁴

A number of the communities served by SCWC (and other regulated water utilities) are disadvantaged urban communities with populations that are least able to afford to pay for needed public water supply and system improvements. Many of these communities have also been hit hard in recent years by contamination of their groundwater supplies.

Given its broad geographic reach and the diverse public water supply systems it operates, SCWC is keenly aware of the need for long range planning to meet its customers’ water quality and supply demands. SCWC is actively engaged in a number of arenas across the state working to improve ground and surface water quality and implement conjunctive use projects to benefit its customers; and, it is actively exploring emerging water supply options such as seawater desalination to help meet its customers’ needs now and in the future.

SCWC appreciates this opportunity to comment on the California Water Plan, Public Review Draft, Bulletin 160-05 (Draft Plan).

³ Legislative Analyst’s Office, Proposition 50 Resources Bond: Funding Eligibility of Private Water Companies, May 2004. <http://www.lao.ca.gov>. Small water companies face extraordinary challenges in meeting modern day service and water quality requirements with capital budgets that are often severely limited. The CPUC is working with the Department of Health Services and others to try to develop strategies to address the needs of customers served by small water companies.

⁴ SCWC purchases more water than 17 of MWD’s 26 member agencies but does not have any direct representation on its board of directors.

II.

General Comments

SCWC asks that DWR take the following general comments into account in revising the Draft Plan.

As a public water supplier with a duty to protect and improve the reliability and quality of its water supplies, SCWC is interested in securing a diverse portfolio of sources of supply, including water use efficiency, conjunctive use, water transfers, and desalination. SCWC also believes strongly in the need for integrated regional water resources management. Only through regional cooperation can many of the above sources of supply be developed and used.

Certainty of water rights is also a critical component of ensuring water supply reliability. In its 1978 final report, the Governor's Commission to Review California Water Rights Law (the Commission) found that uncertainty in water rights is one of the primary impediments to improved water management in California.⁵ The Commission identified three basic causes of uncertainty: (1) unrecorded prescriptive and riparian rights, (2) rights to future use, and (3) varying interpretations of the unreasonable use doctrine. The State Water Resources Control Board (SWRCB) and the courts have addressed the first two of these causes, but the problem with uncertainty created by the doctrine of unreasonable use has expanded over the years.

An effective resources allocation system requires legal certainty.⁶ Without assurances that the rules determining ownership, allocation, and regulation of water rights today will continue in effect tomorrow, public water suppliers are at risk if they invest in technologies and infrastructure necessary to ensure reliable water supplies. Even with legal certainty, changes in population, demand, and environmental priorities will continue to require flexibility in the allocation of scarce water resources. This tension between the need for certainty and the need to be able to adapt to change is a basic problem for California water policy makers and must be taken into account in the Draft Plan and its implementation.

⁵ Governor's Commission to Review California Water Rights Law, Final Report (1978) at pp. 16-20. <http://www.swrcb.ca.gov/general/publications/docs/I584a.pdf>

⁶ Id. at pp. 16-60.

As a public water system, SCWC has the same service obligations as any public agency. It is required to file Urban Water Management Plans⁷ and provide reliability assurances consistent with SB 221 (Kuehl)⁸ and SB 610 (Costa)⁹. As the Department is aware, these laws generally require that land developers identify sources of water for their projects, and that public water suppliers provide specified information regarding present and future water supplies on which the developers and the public can rely.

An urban water supplier such as SCWC that serves more than 3,000 connections is required to prepare, adopt, and file an Urban Water Management Plan with DWR. The contents of the plan must include a description of the area served by the water supplier, describe in detail the available sources of supply, and analyze the reliability of the supply in dry, normal, and wet years at five-year increments over the next 20 years. Urban water suppliers are required to update their plans every five years.

SCWC and other regulated water utilities face challenges that public agencies do not have in meeting these long term planning obligations and legal requirements. One of the greatest challenges is a regulatory process that currently allows for only a three-year ratemaking cycle. Thus, the utilities are legally required to plan for 20 years of reliability while being limited to a 3-year capital program and budget.

The current regulatory process is not conducive to the operation of a water supply and distribution business that serves the public for other reasons as well. Among other things, the process often does not take into account the limitations upon or practical variability of water supply, the need to take quick action to respond to water quality problems, the need to encourage water conservation, or the need for a rate structure with sufficient flexibility and diversity to best position the utilities to meet the needs of their ratepayers.

SCWC is currently working with CPUC staff and Commissioners to develop procedures that will address these and other regulatory impediments to long term water supply and reliability planning by the regulated water utilities.

⁷ Water Code § 10610 *et seq.*

⁸ Chapter 642, Statutes of 2001. Bus.&Prof. Code § 11010; Gov. Code §§ 65867.5, 66455.3, and 66473.7.

⁹ Chapter 643, Statutes of 2001. Pub.Res. Code § 21151.9; Water Code §§ 10631, 10656, 10910, 10911, 10912, 10915, and 10657.

DWR's support for these ongoing efforts within and outside the context of the Draft Plan will be greatly appreciated by SCWC and their ratepayers.

Like public agencies, SCWC is also subject to regulation by the Department of Health Services with regard to drinking water quality standards. However, unlike its public agency counterparts, SCWC is subject to suit by consumers for failure to meet federal and state drinking water standards.

Public agencies, on the other hand, are generally immune from such liability under their inherent sovereign immunity, with limited exceptions. This is an area in which DWR and other state agencies might assist the water utilities to avoid litigation and the expense to their ratepayers under specified conditions.

Another historical challenge for regulated water utilities is the lack of access to public funding of water infrastructure. State agencies administering grant programs under past bond issues have excluded regulated water utilities from receiving bond funds, thereby disenfranchising the taxpayers that are served by regulated water utilities who nonetheless are required to pay their respective share of the bonds.

Unfortunately, there has been a perception among some policymakers – a perception which is actively encouraged by the actions of some public agencies – that to allow regulated water utilities access to public bond funds would constitute the receipt of private benefits. However, it is clear that there is no legal or public policy reason why a regulated water utility should not be eligible for to receive bond funds in behalf of their ratepayers, unless specifically excluded from eligibility under the terms of a particular provision of the bond act¹⁰. Moreover, CPUC regulations and policies are already in place to ensure that bond funds are used exclusively for public purposes, and, that no gain or profit may be realized by the private utility.¹¹

On the whole, SCWC agrees with the structure and recommendations of the Draft Plan. SCWC suggests, however, that the Plan be revised to also

¹⁰ Legislative Counsel Opinion, Request #6016, February 27, 2004.

¹¹ Although it has been the prior law, the CPUC is in the process of reconfirming and establishing rules that make clear that regulated utilities may not earn a rate of return or otherwise receive a private benefit from the receipt of state bond money to make infrastructure investments in behalf of their ratepayers (R04-09-002).

include the General Comments discussed above including but not limited to the following:

- The need for protection of water rights to promote legal certainty and water reliability;
- Recognition of the costs to water users of actions taken to enhance water supply;
- Recognition that regulated water utilities are public water suppliers and that the public interest is protected through the regulatory process of the CPUC; and
- The need for economic incentives to all public water suppliers.

SCWC will also comment briefly on those portions of the Draft Plan discussed at Sections III-IX which follow as they pertain to activities affecting SCWC and its ratepayers.

III.

The Framework for Action

As set forth in the Draft Plan, the Framework for Action has a three-tiered structure. First, the vision of a vital economy, linked with a healthy environment and a high standard of living. SCWC strongly concurs that this is the right vision for California; and, that the availability of a reliable, cost-effective water supply to all regions of the state is an essential component of making this vision a reality for all Californians. The second tier sets forth two specific initiatives for reliability, namely, implementation of integrated regional water management and improvement of statewide water management systems. The last tier establishes the foundational actions for sustainability, namely, efficient water use, water quality protection, and environmental stewardship.

SCWC believes that the Framework for Action is a strong one. It contains key elements of a strategy that will help to ensure that California's water future is sustainable. SCWC acknowledges and greatly appreciates DWR's recognition throughout the Draft Plan of the role regulated water utilities play in meeting the state's long-term water supply reliability needs for more than 20% of the population.

In order to achieve smooth implementation of these ideas expressed in the Draft Plan, SCWC respectfully suggests that DWR further clarify throughout the Draft Plan that, unless otherwise stated, ***all references to public agencies include regulated water utilities*** (for example, see Volume I, Chapter 2 references to “regional and local agencies and governments” [pages 2-5, 2-7, 2-13, and 2-23]); otherwise, SCWC and other utilities will continue to be subject to attack by certain public agencies that they do not protect the public interest or their ratepayers. DWR may wish to consider amending relevant portions of the Draft Plan to use the more inclusive term “public water supplier” to encompass not only local agencies and special districts, but also regulated water utilities.

IV.

Integrated Regional Approaches to Water Resources Management

The Framework for Action calls for the promotion and practice of integrated regional water management. This is done by fostering regional partnerships, developing integrated regional water management plans, and diversifying regional water portfolios. Among the expected results are sustainable water resource use, better water quality, environmental stewardship, efficient urban development, protection of agriculture, and a strong economy.

Integrated regional water management has become broadly accepted in California over the past 15 years. There have been several showcase integrated regional water management plans and agreements, especially in Southern California. Among the elements that make integrated regional water management so valuable are the sharing of resources among regional partners, the provision of multiple benefits from each project, the avoidance of overlapping projects and costs, and the reduction of conflicts.

SCWC has worked cooperatively and successfully with public agencies in many parts of the state on integrated regional planning. For example, in Orange County, the Company has participated in conjunctive use groundwater storage programs with the Metropolitan Water District, Municipal Water District of Orange County and Orange County Water District. Unfortunately, there are areas where an integrated regional planning approach has met with significant obstacles. One of these areas – and it is a critical area for the state’s economy – is in the Central and West Coast Basins of Los Angeles County. The area is heavily dependent on groundwater supplies underlying the various cities, and, is supplied with

imported water from the Metropolitan Water District (MWD) through the Central Basin and West Basin Municipal Water Districts and 4 cities that are also MWD member agencies. SCWC participates in supplying water to its customers in the area from both of these sources.¹²

The basins are under a court adjudication, with the Department of Water Resources (DWR) as watermaster. The adjudication is intended to ensure a sustainable yield of groundwater in the basins. The Water Replenishment District (WRD) has the responsibility and authority to replenish the groundwater basins.

It has been generally agreed that there is space available in the basins for as much as 450,000 acre feet of groundwater storage, over and above replenishment. The many cities and water suppliers in the basins, including SCWC, have been working to develop a regional conjunctive use plan to utilize this storage space and augment the local supplies by providing storage for dry years. To that end, they have participated in the Conjunctive Use Working Group for the Central and West Basins which was sponsored by DWR. The adoption of a consensus based regional plan on conjunctive use of this storage resource will benefit the entire region as well as the rest of the state.

Unfortunately, however, WRD has broken off from this effort and has unilaterally adopted so-called "interim rules" that exceed its authority under its authorizing statute and lack widespread support among the cities and groundwater producers within the region. WRD's initiative is the antithesis of the integrated regional water management approach that is the centerpiece of the Draft Plan. SCWC applauds DWR for its leadership in highlighting the importance of regional integrated planning in the Draft Plan and looks forward to its continued leadership in assisting the parties to negotiate a true integrated regional water management plan for the Central and West Coast Basins.

One of the most important things DWR can do to encourage integrated planning in the Central and West Coast Basin region is to establish the clear

¹² In the Central Basin, SCWC is the sole or primary water supplier of the cities of Artesia, Bell, Bell Gardens, Culver City and Norwalk; in the West Coast Basin it is the sole or primary water supplier to the cities of Carson, Gardena, Hawthorne and Lawndale. It also serves water to parts of Hawaiian Gardens, Lakewood, South Gate and Inglewood and 14 other cities in the region.

understanding that water utilities are public water suppliers and that the public interest is protected through the regulatory function of the CPUC. Continued actions by public agencies in the region to treat utilities and their customers as second class citizens and to demonize them with "PR spin" on the basis of their "private" sector capital sources are destructive and should be expressly discouraged by DWR.¹³

V.

Conjunctive Use Management and Groundwater Storage

The Draft Plan recognizes the value of conjunctive use in developing sustainable and reliable water supplies. Conjunctive use can provide supplies to maintain deliveries in dry years, as well as provide additional supplies in wet to average years. Conjunctive use can substitute for environmentally undesirable surface storage projects. Conjunctive use requires a supply of surplus surface water in wet years, a means of recharging the groundwater basin through percolation or injection, and a means of monitoring the groundwater resource.

As noted above, SCWC has participated in conjunctive use programs in other parts of the state, and, there is great potential for conjunctive use in the Central and West Basin areas of Los Angeles County to meet the long term water supply reliability needs of the cities and ratepayers we serve. As a whole, this area includes a large portion of the population of the state of California. Thus, successful implementation of conjunctive use will not only have a positive impact on a large portion of the Southern California population, it will also relieve pressure on water resources in other parts of the state.

DWR has been, and must continue to be, a leader in facilitating successful negotiations to resolve the kind of disagreements that have pervaded the Central and West Coast Basin areas of Los Angeles County. The Draft Plan sets out the principles that should serve well to guide the negotiations, as well as the elements of a successful agreement and plan.

¹³ For the most recent example, see "Public should reserve water rights - Southern California can't afford to sell its most important resource for a (sic) short-term profits," Daily Breeze, Wednesday, July 20, 2005, a copy of which is attached. See also responses by the Cities of Downey and Lakewood and Southern California Water Company.

VI.

Desalination

Seawater desalination is another method of developing a water supply that has great potential and should be considered where appropriate as part of a public water system's diversified water supply portfolio. Due to the development of new technologies, the cost of seawater desalination has dropped to the point where desalination is becoming feasible as a source of water supply in some coastal areas. Several projects are in the planning and design stage at this time.

The state of California has recognized the importance of desalination since the adoption of the Cobey-Porter Saline Water Conversion Law in 1965¹⁴. The Cobey-Porter Act declares that "[d]esalination is consistent with both state water supply and efficiency policy goals, and joint state-federal environmental and water policy and principles promoted by the Cal-Fed Bay Delta Program¹⁵." DWR is authorized to study desalination projects either independently or "in cooperation with any county, state, federal, or public or private agency or corporation¹⁶", and to finance, construct, and operate such projects, again in cooperation with "any county, state, federal, or public or private agency or corporation¹⁷."

Despite this language in the Water Code, the Coastal Commission has frowned upon the participation of non-governmental entities in desalination projects within its area of jurisdiction. In its policy report on seawater desalination (which has not been adopted by the Commission), the Commission staff recommends that "[b]ecause public ownership and operation of desalination plants may be a significant contributing factor in ensuring that initial development of desalination plants and subsequent water allocations are consistent with the development priorities mandated in the Coastal Act or incorporated in a certified LCP, the Commission should evaluate whether special or additional conditions may be necessary or appropriate in connection with any approvals it may grant to privately-owned desalination plants.¹⁸"

¹⁴ California Water Code § 12945, et seq.

¹⁵ California Water Code § 12947(a).

¹⁶ California Water Code § 12948

¹⁷ California Water Code § 12949.

¹⁸ California Coastal Commission, Seawater Desalination in California, (October, 1993), Chapter 5, Recommendations. <http://www.coastal.ca.gov/desalrpt/dtitle.html>

SCWC believes that in considering development of the desalination resource, it is important to distinguish between private corporations that are not regulated by the CPUC and those private corporations that operate public water systems and are regulated by the CPUC. Different rules would logically apply to each.

In either case, however, private corporations may be well-suited to the financing, construction, and operation of desalination facilities. As a practical matter, private corporations that do not operate public water systems will have to act as partners with local public water systems in order to have access to water distribution infrastructure and a customer base. Private corporations who do operate public water systems are already regulated by the CPUC and so protections are already in place or can be extended by the CPUC. In light of the clear direction from the Legislature to include private corporations in planning, building, and operating desalination facilities, there is no reason to exclude them or to limit their participation or access to state funding if the circumstances otherwise warrant.

VII.

Economic Incentives: Loans, Grants, Water Pricing

The Draft Plan discusses how economic incentives can be used to influence water management. Water pricing can be used to motivate water users to adopt desirable patterns of conservation and water use. Loans and grants can be used to motivate water suppliers to meet public objectives in water quality, environmental protection and infrastructure development.

As a regulated water utility, SCWC is subject to approval of its rate structure by the CPUC. As noted earlier, SCWC is currently working with the CPUC to update important water policy goals and objectives that should be considered in the regulated utility rate-making process. The California Water Plan will be an important source of reference as this process moves forward. Judicious structuring of utility rates can be very effective in helping to meet the state's water policy goals and objectives while at the same time meeting the water supply reliability and water quality needs of utility ratepayers.

The bottom line is that ratepayers who are served by regulated water utilities are entitled to receive the same quality and quantity of water as the customers of public agencies. Utility ratepayers are just as responsible as

any other taxpayers for repayment of state bond debt, and they deserve to receive the same benefits from the bond funds, accordingly.

VIII.

Urban Water Use Efficiency

The Draft Plan describes urban water use efficiency as the use of technological and behavioral improvements in indoor and outdoor residential, commercial, industrial, and institutional water use that lower demand, lower per capita water use, and result in benefits to water supply, water quality, and the environment. SCWC strongly concurs with the Draft Plan's urban water use efficiency goals and believes that there is still a great deal of potential for improvement in this area. Urban water use efficiency is critical for making the best use of existing water supplies and enhancing the reliability of water supplies as the population increases along with pressure on water resources. These are generally speaking also the lowest cost supplies to develop.

SCWC agrees with and supports the Draft Plan's recommendations, which include providing economic incentives, promoting the cost-effective use of recycled water and education. SCWC will be a willing participant in suitable and expanded urban water use efficiency programs, if it can clear the regulatory and institutional barriers that currently constrain it.

IX.

Water Transfers

Water transfers provide a way to redistribute water temporarily without the holder of the water right having to give up that right. Water transfers can promote more efficient use of water by allowing the use of water by someone who has a greater need. Transfers of water from agriculture in Northern California and the Central Valley to urban Southern California have long been seen as a way to deal with the increase in demand caused by urban growth.

Although short-term transfers are fairly commonplace, there have been very few large, long-term transfers in California. When long-term transfers are attempted, tremendous institutional barriers are put in their way. Local governments and others in the region where the water originated object to

the water leaving the region, and water agencies in the receiving area impose rates for the conveyance of the transferred water that make the transfers uneconomical.

As noted in the Draft Plan, DWR has made an effort to facilitate and encourage transfers. These efforts have resulted in an increase of transfer activity, but much remains to be done.

Water transfers have the potential of being a very useful tool for water resource management. Programs such as the Environmental Water Account and the transfer between the Imperial Irrigation District and San Diego County Water Authority have shown what can be accomplished with transfers. However, the potential of transfers has still been largely unfulfilled. Until the institutional barriers can be removed or alleviated, transfers will not be as useful a tool as they could and should be in helping to meet California's long term water supply reliability. SCWC supports water transfers as an important part of a diverse portfolio of water supply resources to meet our customers' long term water supply reliability needs.

X. Conclusion

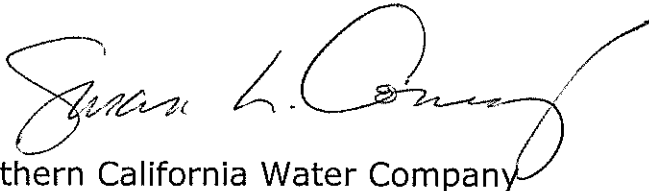
SCWC applauds the work done by DWR in developing the Draft Plan. The Draft Plan presents an excellent framework for the development of California's water resources for the coming decades.

That said, as a regulated water utility, SCWC faces some unique challenges in meeting the water policy goals and objectives outlined in the Draft Plan. These include the need to work with the CPUC to develop planning mechanisms and rate structures that meet the needs of our ratepayers, and, at the same time, allow us to meet our long term water supply planning needs and advance the goals and objectives of California water policy. It is critical that the water utilities and their customers be included in the state's vision of a prosperous California.

SCWC looks forward to continuing to work with DWR and the CPUC as well as other state and local agencies to meet the needs of our ratepayers and the worthy goals and objectives of the Draft Plan.

Please do not hesitate to contact me if you have any questions. Thank you again for this opportunity to comment on the Draft Plan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan L. Conway". The signature is fluid and cursive, with a large loop at the end.

Southern California Water Company

By: Susan L. Conway, Sr. Vice President, Administration

cc: The Honorable Michael R. Peevey, President, CPUC
The Honorable Geoffrey F. Brown, Commissioner, CPUC
The Honorable Susan P. Kennedy, Commissioner, CPUC
The Honorable Dian M. Grueneich, Commissioner, CPUC
The Honorable John A. Bohn, Commissioner, CPUC
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